

The Electricity Excise Tax is imposed upon the privilege of using in this State electricity purchased for use or consumption and not for resale, other than by municipal corporations owning and operating a local transportation system for public service. The incidence of this tax is on the consumers of electricity. See 35 ILCS 640/1 et seq. (This is a GIL).

April 4, 2001

Dear Xxxxx:

This letter is in response to your letter dated March 6, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Upon contacting the Illinois Department of Revenue with a question regarding electricity excise tax, PERSON referred me to you. The question: How does Illinois law compare to the prior STATE law in excluding electricity from Illinois utility tax (UT)?

Our company is an Illinois manufacturer currently paying UT. However, since the electricity is being used in manufacturing products for resale (sales for resale exemption), we may be exempt from UT.

Attached is the STATE Tax Bulletin for Winter 1997. This was sent to notify STATE taxpayers of changes to tax laws regarding the purchases of electricity, effective January 1, 1998.

Prior to January 1, 1998, manufacturers were exempt from paying sales tax on purchases of electricity used in production of products for resale. Effective January 1, 1998, STATE changed the statute so all sales of electricity are taxable to encourage competition and lower prices under energy deregulation.

Please advise as to Illinois' position on taxability of electricity used in manufacturing of resalable products.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1998 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1998 State Bar Edition). Sales of electricity are not subject to

Retailers' Occupation Tax or Use Tax. Sales of electricity are subject to the Electricity Excise Tax Law.

The Electricity Excise Tax Law became effective August 1, 1998. See 35 ILCS 640/1 et seq. This tax is imposed upon the privilege of using in this State electricity purchased for use or consumption and not for resale, other than by municipal corporations owning and operating a local transportation system for public service. The incidence of this tax is on the consumers of electricity.

Except for customers that elect to become self-assessing purchasers, the tax is collected from the customers by their delivering suppliers who maintain a place of business in this State. See 35 ILCS 640/2-7. The term "delivering supplier" is defined as "any person engaged in the business of delivering electricity to persons for use or consumption and not for resale and who, in any case where more than one person participates in the delivery of electricity to a specific purchaser, is the last of the suppliers engaged in delivering the electricity prior to its receipt by the purchaser." 35 ILCS 640/2-3.

There are limited exemptions from tax in this law. Persons using electricity to manufacture products for resale are not exempt from paying the tax to their delivering suppliers.

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330, enclosed. The exemption also extends to repair and replacement parts as long as the parts are incorporated into machinery and equipment that is exempt under the regulation.

As you will note at Section 130.330, the exemption does not include items such as supplies, coolants, lubricants, adhesives, solvents, items of personal apparel, coal, fuel oil, electricity, natural gas, artificial gas, steam, refrigerants or water.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

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Enc.